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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/890,652 | 11/27/2001 | Bernard Klein | USB 98BEIDMPOI | 5268 |

466 7590 01/28/2003

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EXAMINER

BELYAVSKYI, MICHAIL A

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 01/28/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/890,652 | KLEIN ET AL. | |
| | Examiner | Art Unit | |
| | Michail A Belyavskyi | 1644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 December 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 20-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 32-33 is/are allowed.
- 6) Claim(s) 20,25, and 27 is/are rejected.
- 7) Claim(s) 21-24,26 and 28-31 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

RESPONSE TO APPLICANT'S AMENDMENT

1. Applicant's amendment, filed 12/02/02 (Paper No. 10), is acknowledged.

Claims 20-33 are pending and under consideration in the instant application.

2. Claim 21 is objected to because of the misspelled word "at least" in the third line of said Claim. Appropriate correction is required.

In view of the amendment, filed 6/12/02 (Paper No. 13), the following rejection remains.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20, 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (US Patent No 5326749).

Yamamoto teaches a cell composition containing macrophages and T lymphocytes (see entire document, Column 1 line43 in particular). Yamamoto further teaches that incubation of macrophages with lysophospholipides or alkylglycerols greatly enhanced anti-infectious and hematopoietic activity of macrophages (column 1 lines 44-65).

Claim 20 is included, because the referenced peritoneal cells composition (column 8, line 63) would inherently contains about 10 to about 70 % macrophages.

Claim 25 is included because the referenced peritoneal cells composition (column 8, line 63) would inherently contains T lymphocytes in a ration of about 10-60% with respect to total number of cells.

Claim 27 is included because the claimed functional limitation would be inherent properties of the referenced cell composition. A composition is a composition irrespective of what its intended use. The term “pharmaceutical composition” carries little patentable weight in the absence of evidence of structural difference.

The reference teaching anticipate the claimed invention.

Applicant’s arguments, filed 12/02/02 (Paper No. 10), have been fully considered, but have not been found convincing.

Applicant asserts that “while the mixture of peritoneal cells disclosed by YAMAMOTO contains macrophages, B lymphocytes and T lymphocytes, such a mixture does not contain myeloid nor progenitor cells.”

As was pointed out in the previous Office Action, rejected claims 1, 3 and 14 (now claims 20, 25 and 27) recited only a cell composition comprising macrophages, T lymphocytes and a pharmaceutical composition, comprising said cells. There is no recitation of myeloid or progenitor cells presence in said cell composition.

5. Claims 22-24, 26 and 28-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 32-33 are allowed.

7. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskyi whose telephone number is (703) 308-4232. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Michail Belyavskyi, Ph.D.

Patent Examiner

Technology Center 1600

January 27, 2003



CHRISTINA CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600